Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1997

JOHN R. HAEGER,

Petitioner,

vs.

WONDA EDMOND, Child Support Receiver of DeKalb County, Georgia, *et al*

Respondents.

Petition for a Writ of Certiorari to the United states Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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11 pp

QUESTIONS PRESENTED

1. What are the data elements and capabilities of a child support record keeping system necessary to support an allegation of arrearage ?

2. Can a Child Support Receiver perform without a conflict of interest both an enforcement / advocacy function and a financial intermediary function, maintaining and reporting an impartial record to both payor and recipient of child support payments received and disbursed ?

3. Does the *Rooker-Feldman* doctrine bar subject matter jurisdiction when the facts of the complaint are inextricably intertwined with the state court proceeding ?

4. Can the *Rooker-Feldman* doctrine bar subject matter jurisdiction when deprivation of a court hearing free of impropriety is claimed ?

5. Did the Plaintiff fail to state a claim entitling him to relief under 42 U.S.C. § 1983 ?

LIST OF PARTIES

JOHN R. HAEGER, JR.
Ms. WONDA M. EDMOND, The Alimony and Support Coordinator of DeKalb County,
Ms. ASHLEY DUNCAN, former director, DeKalb County U.R.E.S.A. (Or Child Support Collections) Office
DEKALB COUNTY, GEORGIA
Dr. TERESSA F. HAEGER
Ms. CAROL JONES, former Clerk of the Superior Court of DeKalb County, Georgia
Ms. LINDA REEVES, former Clerk of the Superior Court of DeKalb County, Georgia
Honorable HILTON FULLER, former Administrative Judge, Fourth Judicial Administrative District of Georgia
Honorable DANIEL COURSEY, former Administrative Judge, Fourth Judicial Administrative District of Georgia
Mr. RICHARD JUGAR, Court Administrator, Fourth Judicial Administrative District of Georgia
Mr. JONATHAN WEINTRAUB, County Attorney, DeKalb County, Georgia

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I

OPINIONS BELOW

The opinion of the Court of Appeals (Appendix A) is unpublished. The opinion of the District Court (Appendix B) is unpublished. The opinion of the Court of Appeals (Appendix C) on Plaintiff's Petition for Rehearing and Suggestion of Rehearing En Banc is to be reported at _____ F. 3d ____ . The Opinion of the Court dismissing a subsequent Complaint alleging deprivation of notice and hearing and containing the court's opinions as to the instant Complaint is at Appendix D. The opinion of The Superior Court of DeKalb County, Ga, is unpublished. The underlying complaint seeks review of the manner of according due process of law. No review or modification is sought of a state court judgment.

STATEMENT OF JURISDICTION

The denial of rehearing by the Court of Appeals was entered on June 20, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The following items and extracts upon which petitioner relies are reproduced in Appendix E:

Section 1 of the Fourteenth Amendment to the U.S. Constitution

(Georgia) Uniform Rule of Superior Court 36.4 Pleadings must be signed by a party or an attorney

O.C.G.A. 15-15-(2)(a) Establishing a Child Support Receiver
O.C.G.A. 15-15-4.1 Authorizing a Child Support Receiver to "bring an action."

Canon 3 of the Canons of Ethics of the Georgia Bar
An attorney's duty to assist in preventing Unauthorized Practice of law

(Georgia) Fourth Judicial Administrative District Administrative Order 86-1001
Establishing a Child Support Receiver as a Unit of the Administrative District

18 U.S.C. § 1341 - Mail Fraud

Fourth Judicial Administrative District publication "DEKALB COUNTY SUPERIOR COURT ALIMONY AND SUPPORT UNIT"
Stating policy that a child support recipient need neither appear nor engage an attorney to appear at a contempt hearing

O.C.G.A. 15-19-50 *et seq* Defining practice of law; barring unauthorized practice; barring engagement of unlicensed practitioners

Canon 3B(7) of the Georgia Supreme Court's Code of Judicial Conduct
Barring ex parte communication

Canon 3B(9) of the Georgia Supreme Court's Code of Judicial Conduct
Barring comment that might affect the outcome of a case and requiring judges to enforce the bar on their staff

O.C.G.A. § 50-18-70 *et seq* Georgia Open Records Act

STATEMENT OF THE CASE

A. ORGANIZATIONAL STRUCTURE and POLICY

Administrative Judge: O.C.G.A. § 15-5-2, 3, and 4 (See Appendix E) establish ten judicial administration districts, a district council composed of all judges of superior courts within a district, and the position of administrative judge, elected by the district council. The Administrative Judge performs that function in additional to his regular trial court duties.

Financial cognizance: The Administrative Judge is the only officer of the District; the Administrative Judge of the Fourth Judicial Administrative District submits budgetary requests to DeKalb County, which pays salaries and provides office space, utilities, telephones, etc. to the Administrative District's Alimony and Support Unit (ASU). As the only officer of the District, the Administrative Judge is the only officer to whom financial responsibility for, or cognizance over, the organizations he supervises, including the ASU organization, can be attributed.

Child Support Receiver: The position titled Alimony and Child Support Receiver of DeKalb County is not a statutory position; it was established by the Administrative Judge of the Fourth Judicial Administrative District in Administrative Order 86-1001 (See Appendix E). In that Order, the Administrative Judge delegates to his statutory assistant, the Court Administrator, supervision of the Child Support Receiver for "administrative management" matters and (presumably) retains all other supervisory responsibilities.

Dual Functioning Administrative/Trial Court Judge: As in both *Tumey v. State of Ohio*, 273 U.S. 510, 524, 47 S.Ct. 437, 441 (1927) and *Ward v. Village of Monroeville*, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972), the trial judge in the case complained of

performed dual functions. He was both a trial court judge and the Administrative Judge of the Fourth Judicial Administrative District, the supervisor of the Child Support Receiver who appeared before him unaccompanied as the only representative of (and advocate for) a recipient.

DeKalb County: DeKalb County has admitted in its Answer that the Child Support Receiver of DeKalb County is a DeKalb County employee. The governing body of DeKalb County, Georgia, is a popularly-elected Board of Commissioners. The head of the Executive branch of DeKalb County government is a popularly-elected Chief Executive Officer. The County operates according to a Code of DeKalb County which only permits the Board of Commissioners to act through the CEO. Absent evidence which may be developed in discovery, development, activation, and operation of a child support record keeping system of this scope typically only occurs as a matter of policy.

No supervisory chain from County CEO to Child Support Receiver: An organizational result of supervision of the Child Support Receiver by the Administrative Judge (a state officer) and his statutory assistant is that there is no supervisory chain running from the Chief Executive to the Child Support Receiver through which the Board of Commissioners (the governing body) may act to impose policies upon the Child Support Receiver, its admitted employee.

Policy: Appearance/Representation by Child Support Recipient is Optional: A publication of the Fourth Judicial Administrative District entitled "DEKALB COUNTY SUPERIOR COURT ALIMONY AND SUPPORT UNIT" (See Appendix E) indicates that the child support recipient does not need to appear nor to engage an attorney to appear at a contempt hearing.

B. THE STATE COURT PROCEEDING

False Accusation of Arrearage / Unlicensed practice of law: In November, 1993, the child support recipient falsely accused Plaintiff of failure to pay May, 1993, child support. The child support receiver, who is not an attorney, and in reliance on the DeKalb-County-operated computerized child support record keeping system, prepared a motion for contempt.

Acceptance of defective pleading: An employee of the Clerk of Superior Court accepted the motion which did not indicate by whom it was "prepared." "Prepared by" indicia is required by Georgia Uniform Rules of Superior Court 36.4 (See Appendix E)

Receiver Determines that the "arrearage" never existed: By elimination, Plaintiff determined the payment in question and mailed a copy of the canceled check (paid in May, 1993) to the Child Support Receiver. On receipt of the copy of the check, the Child Support Receiver called the
recipient and confirmed that Plaintiff did pay the payment she had earlier (and falsely) alleged he had not paid. Plaintiff requested the Child Support Receiver to drop the case.

Use of Mail to convey a demand for money not owed: The Child Support Receiver responded to Plaintiff's request to drop the case by using the U.S. Mail to convey yet another demand that Plaintiff pay the amount she had confirmed that he had already paid plus a $ 90 "court fee."

Representation by unlicensed practitioner: The Child Support Receiver appeared in court unaccompanied by either the recipient or an attorney (as was indicated permissible in the publication "DEKALB COUNTY SUPERIOR COURT ALIMONY AND SUPPORT UNIT'), orally amended the Motion for Contempt

before that court, reducing the remedy demanded to just the $ 90 court fee. The Child Support Receiver also took an oath as a witness and testified on behalf of the recipient. The trial judge was the dual-functioning Administrative Judge, the supervisor of the Child Support Receiver.

Administrative Judge awarding his own revenues: The trial court judge/Child Support Receiver supervisor undertook to rule on whether Plaintiff should pay once more the already-paid child support and whether Plaintiff should pay the $ 90 "court fee" sought by his supervisee for the ASU he supervised. The dual-functioning trial court judge/Child-Support-Receiver-supervisor ruled that Plaintiff did not have to pay the May, 1993 child support for a second time and declined to award the Child Support Receiver the $ 90 "court fee" she sought.

Additional unlicensed practice & Ex parte communication: The next day, unknown to Plaintiff, the Child Support Receiver prepared and presented an order to the trial judge (her supervisor) and obtained his signature. Thirty days after entry (when it was no longer appealable) the Child Support Receiver mailed a copy of the order to Plaintiff.

Blocking Informal Inquiry: Plaintiff requested inspection of documents under the Georgia Open Records Act that bore upon the manner of accordance of due process of law. Some defendants denied access and later permitted inspection; one defendant never cured his denial.

C. PETITIONER'S ATTEMPT TO OBTAIN RELIEF

Plaintiff filed suit in U.S. District court alleging Federal Causes of action including:

--Unlicensed practice of law by the Child Support Receiver in preparing papers incident to an action in court (motion for contempt and order)(See O.C.G.A. § 15-19-50, Appendix E),

--Improper acceptance by Clerk's employees of papers not signed by the party or an attorney (See Rule 36.4, Uniform Rules of Superior Court, Appendix D),

--Improper notice (no affidavit accompanied the motion for contempt),

--Failure to train (see previous)

--Deprivation of a hearing free of impropriety because the Child Support Receiver (not an attorney) spoke to the court as the sole representative of Plaintiff's ex-wife, then, after advocating on behalf of a the ex-wife, testified on the ex-wife's behalf. She did all of this in the presence of the trial judge who was also the Administrative Judge, her supervisor,

--Failure to keep accurate records of child support obligations and payments,

--Operation by the County of a child support record keeping computer system incapable of keeping any records whatsoever of obligations satisfied and unsatisfied,

--Failure to act to prevent unlicensed practice of law in violation of the Code of Ethics of the State Bar of Georgia and of Georgia's Code of Judicial Conduct (See Appendix E),

--Failure to prevent a court staff member from speaking publicly in a way that might affect the outcome of a case in violation of Georgia's Code of Judicial Conduct,

--Engaging in *ex parte* communication in a manner prohibited by Georgia's Code of Judicial Conduct, and

--An attempt by the County Attorney to cover up the deprivation of due process by violation of the Georgia Open Records Act (See Appendix E) by which Plaintiff attempted to conduct informal pre-filing inquiry.

Plaintiff also alleged supplemental state claims:

-- Violation of Georgia's Constitutional Separation of powers doctrine in supervision of an enforcement employee by a state judicial officer

Plaintiff sought declaratory judgment that:

--the practices complained of violated Georgia law,

--child support record keeping systems must incorporate certain minimum data elements (obligations and payments),

--the record keeping system must facilitate gross balancing tests of all payments received, disbursed, and posted to accounts,

--audit is essential to financial oversight of the record keeping system, and

--the Child Support Receiver performs executive branch (enforcement) functions.

Plaintiff sought prospective relief through:

--barring the named supervisors from permitting their supervisees to engage in statutorily defined acts of practice of law,

--barring the named state judicial officers and employees and their successors from supervising employees who perform executive branch functions,

--requiring that they submit to the Court written procedures for implementing that bar,

--barring the named actors from accepting or taking judicial notice of papers filed in violation of Rule 36.4 of the Uniform Rules o f Superior Court (See Appendix E),

--barring the Administrative Judge from supervising an enforcement employee,

--barring operation of a computer system incapable of maintaining records sufficient to report on unsatisfied obligations composing an arrearage, and

--barring named actors from operating a child support enforcement activity that:

a) does not reconcile gross receipts to payment postings
b) does not reconcile gross disbursements to disbursement postings
c) is not audited

Plaintiff's suit was dismissed by the District Court with an opinion in the alternative: Either

I) Plaintiff had failed to establish subject matter jurisdiction OR
II) Plaintiff had failed to state a claim entitling him to relief

JUDGE PERFORMING ADMINISTRATIVE FUNCTIONS

This complaint has to do with a judge's action in an administrative context, that of the supervisor of the Child Support Receiver. An Administrative Judge who actively participates or takes no action to prevent the deprivation, when acting in an administrative role, can be held liable for his acts or omissions, *Forrester v. White*, 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed. 555.

The District Court has persistently refused to recognize that Honorable Judge Fuller has administrative duties as Administrative Judge. The District Court accepts defendants' averment that O.C.G.A. § 15-15-4 (a child support receiver statute) applies, thus protecting Honorable Hilton Fuller from a claim that he permitted unlicensed practice. All this even though Plaintiff has learned through Open Records Act inquiries that an O.C.G.A. § 15-15-2(a) resolution, essential to a claim of 15-15-4 rights, does not exist. These misperceptions by the District Court, stemming from denial of a hearing with the opportunity to present arguments face-to-face, support the District Court's misunderstanding of this claim as one having to do with a judge engaging in judicial acts.

Rooker-Feldman doctrine inappropriately applied

In the District Court opinion, in discussing the *Rooker-Feldman* bar to subject matter jurisdiction, the Court shifted in mid-argument from the language of the *Feldman* opinion, "inextricably intertwined with the state court judgment" to a significant expansion of the doctrine, "inextricably intertwined with the state court proceeding." (Appendix B, top of page 11a)

The district court's opinion, if affirmed *en banc* by the 11th Circuit, would provide an authoritative precedent in the 11th Circuit and persuasive precedent in other Circuits to bar subject matter jurisdiction in all cases challenging deprivation of due process of law

in the context of a state court proceeding. The 11th Circuit wisely declined to publish its affirmation on those grounds or to hear the matter *en banc*.

Plaintiff pleaded in vain for the Court of Appeals to reject this extension of the *Rooker-Feldman* doctrine. This proceeding has not yet reached discovery. Plaintiff pleaded in vain to the Court of Appeals to apply the *Conley* rule that requires acceptance of plaintiff's averments at this stage of proceedings. Plaintiff's pleas were rejected.

Conflict with decisions of other Appellate Courts: There are no Appellate or Supreme Court decisions that support this expansion of the *Rooker-Feldman* doctrine.

***Rooker-Feldman* v. the right to a hearing free of impropriety.** The *Rooker-Feldman* bar to subject-matter jurisdiction is a product of our federal system and comity with the state courts. Compared with the right to a hearing free from impropriety dating back to Richard II, *Rooker-Feldman* is but a newcomer. Application of *Rooker-Feldman* in this instance would preclude subject matter jurisdiction over a claim of deprivation of a hearing free from impropriety. The lower courts should not by this expansion of *Rooker-Feldman* be allowed to deny subject matter jurisdiction over a suit alleging deprivation of a defendant's ancient right to a hearing free from impropriety.

***Rooker-Feldman* v. Prospective relief**: Plaintiff seeks prospective relief in this suit in proposed changes to the organizational structure and to the Clerk's procedures whereby the procedure complained of was permitted to be instituted. The *Feldman* opinion explicitly excludes suits seeking prospective relief from its bar to jurisdiction. Here, the District Court ignored the *Feldman* prospective relief exclusion, *District of Columbia Court of*

Appeals v. Feldman, 460 U.S. 462 at 479, 103 S.Ct. 1303 at 1313, 75 L.Ed. 2d 206, where this court observed that "The District of Columbia Court of Appeals did not 'loo[k] to the future and chang[e] existing conditions . . .'" Plaintiff also seeks to upgrade the record keeping capability of the Child Support Receiver so that her computer system can record obligations that have arisen and application of payments to current and arrearage obligations. The current system is merely a payment-record system with no capability to report on arrearages or to split payments between current and arrearage obligations.

The *Rooker-Feldman* doctrine bars subject matter jurisdiction when a review of a "state court judgment" is sought. It bars subject matter jurisdiction when the facts of the claimed deprivation are "inextricably intertwined with the state court judgment." Neither the District Court nor the Appeals Court expressed reliance on any opinion of the Supreme Court or of any Court of Appeals expanding the *Rooker-Feldman* doctrine to bar subject matter jurisdiction to encompass "state court proceedings."

The District Court ruled in the alternative: either subject matter jurisdiction was lacking due to the *Rooker-Feldman* bar to consideration of cases that are inextricably intertwined with a state court proceeding OR Plaintiff failed to state a claim entitling him to relief under 42 U.S.C. § 1983. The 11th Circuit Court of Appeals abandoned the District Court's "failure to state a claim" alternative and affirmed the District Court's argument that the facts complained of were "inextricably intertwined with the state court proceeding."

Plaintiff does not seek to change the state court judgment. Plaintiff seeks to change the manner in which due process of law is accorded himself and future child-support defendants in DeKalb County Superior Court and in similar courts throughout the nation. The District Court argued in two suits that subject matter jurisdiction was barred by the *Rooker-Feldman* doctrine. In the instant case, the

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Court of Appeals affirmed the *Rooker-Feldman* bar to jurisdiction. In the second case, (*Sullivan*, see Appendix D) the Court of Appeals affirmed the District Court, but ignored the District Court's and Defendants' arguments and based its Appeal opinion on entirely new arguments not raised in the District Court or on Appeal by either the Defendants or the District Court.

Failure to Address Claims Stated by Plaintiff

The District court accepted Defendants' averments and rejected plaintiff's arguments that he could show a different state of facts if discovery were permitted. As this Court held in *Conley v. Gibson*, 355 U.S. 41 at 45, 78 S.Ct. 99 at 102, "the accepted rule [is] that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

In addressing Alternative II of its opinion, the District court cited case law concerning procedural and substantive due process but did not tie the holdings to specific fact situations that would invoke the *Rooker-Feldman* doctrine and upon which the District Court could rely. In its review of claims of deprivation of substantive due process, the District Court never addressed Plaintiff's claim of deprivation of a hearing free of impropriety.

The District Court relied on Defendants' averments of the applicability of O.C.G.A. § 15-15-4.1 and rejected Plaintiff's averment that it was not applicable. In order for O.C.G.A. § 15-15-4.1 to apply, there must be an O.C.G.A. § 15-15-2(a) resolution by the governing body of the County. Based on Open Records Act inquiry to the Clerk of the governing body, no such resolution exists (See Appendix E). At the very least, plaintiff is entitled to discovery to establish as a matter of record what he has learned in pre-filing inquiry.

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In its order [Appendix , p 20a] the Court chastised Plaintiff for failing to challenge the Constitutionality of 15-15-4.1 when Plaintiff believes based on reasonable inquiry that the Code section lacks the adoption resolution and is inapplicable. Even one face-to-face hearing with the Court could have resolved some of the Court's misunderstanding.

The District Court devoted three pages in its order to procedural due process, considering, not Plaintiff's claims, but defendants' recast (and much more easily defensible) claims. The Court does not discuss any of plaintiff's claims (unlicensed practice of law, ex parte communication, etc), assumes (incorrectly) that Plaintiff failed to notify the ASU of a payment made directly to the recipient prior to entry of the order to pay through the ASU, and, ultimately observes that plaintiff had offered no claims of procedural due process.

The Court spent one page discussing substantive due process without mentioning plaintiff's claim of deprivation of his right to an impartial hearing (supervisee on the bench, unlicensed practitioner supervisee Child Support Receiver at plaintiff's table unaccompanied, representing ex-wife). The District Court this observed that no substantive due process rights were violated.

The Court of Appeals affirmed District Court alternative I, applying the misstated *Rooker-Feldman* ("state court procedure") doctrine and ignoring the prospective relief sought by Plaintiff which should have obviated the application of *Rooker-Feldman*.

REASONS FOR GRANTING THE PETITION

There are two reasons for granting this petition.

1) As to this case, the *Rooker-Feldman* doctrine has been misapplied in three ways. Firstly, the doctrine was misstated, and then applied as misstated. Secondly, it has been applied so as to override one of the bedrock principles of Constitutional law: the right to a hearing free of impropriety. And thirdly, even if stated properly, it has been misapplied against a complaint containing claims for prospective relief.

2) As to the national interest, this case, because of its plethora of deprivations of due process demonstrates many practices that appear to have come to characterize child support enforcement as an area of the law wherein the perceived importance of a social goal has been allowed to override elemental due process of law.

This case features a child support payor who was and had been current. That payor was abused by an unlicensed and unknowledgable practitioner running amok within several areas of law: civil practice, domestic law, commercial paper, and debtor/creditor; areas of practice fraught with legal complexities that should be handled by a skilled practitioner. This unlicensed DeKalb County practitioner is secure in the knowledge that the political correctness of her activity will protect her from the consequences of her actions. She knows that her victims will be steamrollered if they complain, much as Plaintiff is being steamrollered in the Federal judiciary with specious arguments from those unwilling to accept the plain truth of this Complaint.

Common wisdom as to minimum child support record keeping standards has been written into 45 CFR 307 (Appendix E). In that section, we learn that "records of support payments" and an "account

receivable" balance meets minimum Federal standards for computerized child support record keeping systems.

Another element of common wisdom in the child support enforcement community is that audit of individual accounts is unnecessary. Audit is required, but only to assure that Federal funds are not wasted. One can search CFR and US Code high and low and not find any requirement to audit individual accounts. And without a mechanism for detecting and correcting errors, accuracy is the first victim; the payor is the next.

If he were aware of a legal argument, Plaintiff would plead to this court for a statement as to the importance of audits of individual accounts. But plaintiff is not aware of a legal question to place before this Court for which "audit" is the answer.

However, Plaintiff is aware of an omission from this common recordkeeping wisdom: OBLIGATIONS.

Courts often order child support in which obligations arise periodically. Those obligations are satisfied and extinguished as payments are received. Courts have the power to enforce their own orders. And, in order to correctly enforce their own order, they must know which obligations have been satisfied and which have not. One should not be held in contempt for an obligation that has been satisfied. The best way to keep records of obligations satisfied and unsatisfied is to keep a record of the obligations as they arise and to "apply" the payment to the obligation or "spread" the payment between obligations on a financial record system (manual or automated) when the payment exceeds a single obligation.

DeKalb County does not have that capability. Other child support computer systems in other states that merely conform to the minimum standards of the CFR do not have that capability. Yet contempt orders abound--based on what sort of information ?

Plaintiff urges this Court to review the DeKalb County recordkeeping system as a (bad) example, review the CFR as an incomplete example, and take this case as a vehicle to set out the basic elements of payments and obligations necessary to establish an arrearage upon which contempt can be had.

Those elements are not complex. In order to declare an obligation unsatisfied, one must know all of the obligations that have arisen since a reconcilement point. One must know of all of the payments that have been received. And one must have a recordkeeping mechanism for showing how the payments were applied.

"Reconcilement" would be a good practice too, but again, given the facts in this case, Plaintiff knows of no legal argument for which "reconcilement" is the answer.

Today's prevailing practices are confidentiality against the payor (by virtue of federal statute), unaudited individual records, and presentation of "accounts receivable" from systems that conform to 45 CFR 307.10, and steamroller courts (like those described in Plaintiff's complaint) so as to move payor/victims in and out of the courtroom before they realize the failings of the recordkeeping system.

Plaintiff prays this court to establish guidelines for determining whether or not a payor has satisfied specific obligations.

THE *ROOKER-FELDMAN* DOCTRINE: Misstatement, misapplication and conflict

Misstatement: "State court judgment," NOT "state court proceeding"

(See Appendix A, District Court Order, page 3 of Discussion, immediately after cite to *Hale v. Harney*). The District Court's expansion, if *certiorari* is denied here, will stand as an informal precedential technique for dismissing any complaint alleging deprivation of due process of law in the context of a court proceedings (isn't that the usual context in which to observe due process of law ?). Thereafter the District Court opinion relies solely on the misstated "state court procedure" language.

The Eleventh Circuit's unpublished expansion of the *Rooker-Feldman* doctrine undermines a rule of law by establishing an informal precedent within the Eleventh Circuit permitting denial of jurisdiction in claims of deprivation of due process. Because this precedent is not published, it provides a handy (but unsupported) rationale for denying a hearing to a politically incorrect petitioner.

Conflict: *Rooker-Feldman* vs Hearing Free from Impropriety

Although not explicitly stated in the District Court's opinion, it appears that this case is at the intersection of the *Rooker-Feldman* doctrine, which bars Federal jurisdiction where review is sought of a state court judgment, and the doctrine that a defendant is entitled to a hearing free from impropriety. The right to a hearing free from impropriety is an ancient one. In *Tumey v. State of Ohio*, 273 U.S. 510, 524, 47 S.Ct. 437, 441 (1927), where a mayor undertook to rule on imposition of a fine which would redound to the benefit of his organization, the right to a hearing free from impropriety was traced back to 12 Richard II, A.D. 1388. That right has been recognized more recently in quite similar circumstances in *Ward v. Village of*

Monroeville, Ohio, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed. 2d 267 (1972) and again as recently as *Rose v. Village of Peninsula*, 839 F.Supp. 517 (N.D. Ohio 1993). The right to a hearing free from impropriety, going back to medieval English law, should not become the victim of the District Court's unsupported expansion of the *Rooker-Feldman* doctrine to include "state court procedure."

In the instant case, the only officer of the Judicial Administrative District undertook to rule on whether a fee should be awarded to the Child Support Receiver organization which he supervised. The request for the award was made by his supervisee, the Child Support Receiver, while she stood before him in his courtroom representing a party and while he was acting in his alternate role as trial judge.

The right to a hearing free from impropriety is one of a very few categories of constitutional error for which the Supreme Court has declined to permit application of harmless error review. It is given special attention in *Dawson v. Delaware*, 503 U.S. 159, 112 S.Ct.1993, 117 L.Ed. 2d 309, where Justice Blackmun, quoting Justice Stevens, concurring in *Rose v. Clark*, 478 U.S. 570, 587, 106 S.Ct. 3101, 3111, 92 L.Ed. 2d 460 (1986) who noted that "[V]iolations of certain constitutional rights are not, and should not be subject to harmless-error analysis because those rights protect important values that are unrelated to the truth-seeking functions of the trial."

Misapplication: Prospective Relief Sought

Plaintiff sought review of the manner in which due process was accorded. In addition, Plaintiff seeks to improve the manner in which due process of law is accorded to Plaintiff and other child-support-related defendants in DeKalb County, Georgia. In this first suit, the District Court has invoked *Rooker-Feldman*. Plaintiff filed a second suit alleging almost all of the same systematic deprivations

plus deprivation of notice and hearing. The District Court has dismissed that case without comment on the deprivation liberty and property interests without notice or hearing.

In the first suit, Court of Appeals affirmed the District Court's opinion that the violations of clearly established law occurred in the context of a "state court proceeding" and therefore subject matter jurisdiction was barred by the *Rooker-Feldman* doctrine. No decisional law was cited for this extension of *Rooker-Feldman* either the District Court Opinion or for the affirmation.

Plaintiff asserts that this "inextricably intertwined with a state court proceeding" concept is an expansion of the *Rooker-Feldman* doctrine. An appeals court ruling and even a District Court ruling that establishes or extends, or otherwise modifies application of an existing principle of law should be published. If this ruling were to be published, it would establish new law in the 11th Circuit and nationally. And this new law would preclude subject matter jurisdiction in all complaints alleging deprivation of due process of law in the context of a state court proceeding.

ENFORCEMENT EXCESS: PROTECTION-LIKE DEMAND

The Child Support Receiver's's actions come as close to "protection" in the organized crime sense as one could imagine for a governmental organization. In full knowledge that there was not (and had never been) any arrearage, Defendant Edmond demanded a "court fee" that would most likely be less than the cost of engaging an attorney to defend against the false allegation. Many fathers might just pay the Child Support Receiver's extortionate demand and consider it cheaper than protecting their good name. This Plaintiff, however, had paid child support from well before an order was issued. He paid each payment under a temporary order without demand or delay. He paid through the Alimony & Support Unit. He thought his good name worth protecting and went to court to do so.

And what he found was massive and systematic violations of elementary due process of law that required the implicit cooperation of two court officers, the Administrative Judge and the Clerk.

THE PENDULUM HAS SWUNG TOO FAR FROM A RULE OF LAW IN CHILD SUPPORT ENFORCEMENT

The plethora of violations of due process in this single case demonstrate that the DeKalb County child support system, in pursuit of a worthy social goal, has gone awry. And, to judge from the hue and cry within the national non-custodial parent community, DeKalb County is not alone in its excesses.

This case displays numerous deprivations of due process of law in the course of attempting to collect child support that was not owed. This *pro se* Plaintiff was able to identify so many deprivations that the proceeding bears comparison to a Sunday-comics cartoon captioned "How many violations of clearly established law can you find ?" If Plaintiff were represented by a Constitutional-law attorney rather than by himself, that attorney might well have found even more deprivations. If Plaintiff's discovery indicates that political correctness of a "child support collection at any cost" viewpoint has overwhelmed the rule of law, it is time for a return to a rule of law.

This case, at both the state and federal levels, has departed so far from the accepted and usual course of judicial proceedings as to call for exercise of this Court's supervisory power.

These violations appear to be systematic within the DeKalb County system. But they reverberate across the nation from numerous child-support payors who believe that they have been dealt with unfairly--both in a legal and a moral sense. The Supreme Court is not a court of morals. But it is a court of law.

Plaintiff offers this honorable Court the opportunity to establish the principal that, like Son of Sam, David Dellinger, and Ted Bundy, child support payors retain the civil rights that are due to any party to a legal proceeding conducted in accordance with U.S. Constitutional guarantees.

A child support order is not indicia of a violation of any law nor a basis for denial of any Constitutional right. Complaints of deprivation of Constitutional protections are rife in the child-support payor community. Because Plaintiff was current in his child support payments (and had been current since first ordered to pay child support) this case offers an opportunity to review the manner of according due process of law in a case not burdened with the emotional baggage of arrearages.

If *certiorari* is denied in this instance of clear and flagrant abuse, it will be a signal that due process of law may be ignored in the context of child support collection. Even if unpublished, this case will stand for the principle that child-support-paying parents, even when fully paid, even with no history of arrearage, are not entitled to due process of law.

OPPORTUNITY TO SPEAK: Child Support Enforcement vs. Due Process of Law

Appeals Court withholds opportunity: The Supreme Court depends on (and awaits) Appeals opinions to provide Appellate-level judicial thinking on developing issues in law and society such as this one. The Eleventh Circuit's unpublished expansion of the *Rooker-Feldman* doctrine, while denying Plaintiff a well-considered analysis of his claims, also denied the Supreme Court the benefit of analysis of this developing issue in which the zeal of state child support enforcement actors conflicts with elemental due process rights of child support payors.

To the extent that Appeals Courts are hesitant to open the gates on this issue, and do so, as in this case, by declining to publish analytic rulings, the process of taking these issues to the Supreme Court is delayed. And to the extent that such an Appellate position becomes known, child support enforcement organizations, such as this one, become more and more brazen in their deprivations, secure in the knowledge that their deprivations will not be subjected to judicial review.

CHILD SUPPORT ENFORCEMENT: A SOCIAL BENEFIT

Without minimizing the need for child support enforcement, such a governmental endeavor to solve a social problem, like environmental protection, child labor laws, and other governmental endeavors to solve social problems, must be conducted in accordance with a rule of law. The cry that according civil rights hobbles this exceptionally important function (child support enforcement) places a social goal above Constitutional rights. If the social compact is to be upheld, if the Constitution is to be upheld, social goals must not be allowed to run rough-shod over Constitutional rights.

OPPORTUNITY TO PROVIDE GUIDANCE AS TO RECORD KEEPING REQUIREMENTS: 1-ARREARAGE AS A SUM OF OBLIGATIONS UNSATISFIED 2-APPLICATION OF PAYMENTS TO SATISFY SPECIFIC OBLIGATIONS

U. S. Office of Child Support Enforcement record keeping requirement : One needs only to look at 45 CFR 307.10 "Functional requirements for computerized support enforcement systems," to recognize the nature of the record keeping standards problem. That section establishes minimum standards for computerized child support record keeping systems. The only (indirect) reference to an obligation in those minimum standards is

307.10(7) "Maintaining accounts receivable on all amounts owed, collected, and distributed." An "Account receivable" is a gross amount owed. That gross amount provides no basis for a judge to reconcile conflicting claims between the payor's records to the receiver's records. A judge's duty is to enforce court ordered obligations that have not been satisfied. The "standards" in 45 CFR 307 do not require records to maintain any basis for determining what obligations have and have not been satisfied. At 307.10(15)(I) reference is made to "The automated maintenance and monitoring of accurate records of support payments." Again, no mention is made of accurate records of obligations satisfied and unsatisfied.

If this social goal is to be achieved in a way that is fair to both payors and recipients, child support law should be congruent with the whole fabric of debtor/creditor law. To do so, there must be a method of reconciling payor and recipient records at the level at which our courts should be enforcing their own orders: obligations satisfied and unsatisfied. One of the surest ways to assure that our legal system treats payors and recipients fairly and equally is for this Court to establish guidelines for reconciling the controversies that occur today in great numbers concerning whether a payor is or is not in compliance with a court order.

Child Support Order does not take away a payor's civil rights: Ted Bundy, Wayne Williams, and Son of Sam were found to be serial murderers--but they retained their rights to due process of law throughout the legal process. Imposition of a Child Support order does not convert the payor into a criminal. And even if it did, a child support order is not a basis for denial of due process rights. Because of the plethora of violations of due process in this case and because of Plaintiff's payment history, this case offers a relatively uncluttered model for a statement of due process rights for child support payors.

The DeKalb County record keeping system has congenital deficiencies:

A) It cannot record obligations

B) It cannot apply payments to obligations so as to show satisfaction of the obligation

C) It cannot split payments and apply them partly to current obligations and partly to prior unsatisfied obligations.

D) It cannot calculate an arrearage amount.

This case offers a vehicle to state obvious (but not widely accepted) record keeping concepts
--that contempt lies for failure to satisfy specific court-ordered obligations,
--that if one is to allege arrearages, one must be able to identify which obligations are unsatisfied
-- that to do so, one must record obligations, apply payments to satisfaction of those obligations, and report to the payor which obligations remain unsatisfied.

Business-like approach to alleging arrearages: Any businessman who came to court demanding money, and testified that he did not have a record of which contractual obligations had arisen and remained unpaid, and that he had made no attempt to keep records to match the payments he had received to satisfaction of specific contractual obligations, would likely leave court without a judgment.

Child support enforcement, no matter how noble its social goal, must come to court in a business-like manner. The accused party is entitled (as was Plaintiff) to a child support enforcement complaint accompanied by an affidavit alleging that specific court-ordered obligations were not satisfied. The system foisted on its Child Support Receiver by DeKalb County cannot do that. But that system meets minimum federal statutory and regulatory standards.

OPPORTUNITY TO EMPHASIZE DUE PROCESS IN A CHILD SUPPORT ENFORCEMENT CONTEXT

Because Plaintiff continues to pay child support through the same ASU and because of the systematic nature of the deprivations in the case on appeal, Plaintiff experienced similar deprivations 1 ½ years later when an income deduction order (which requires demonstration of an arrearage) was prepared by the same Child Support Receiver, presented *ex parte* to the same trial/Administrative Judge, and issued without notice or hearing. Plaintiff filed a second complaint. As with the first Complaint, the same District Court dismissed the second complaint, incorporating into her order her personal opinion that Plaintiff "alleged a variety of claims that express his displeasure with the ramifications of divorce and child support litigation . . ."

The pendulum appears to have swung so far in support of child support enforcement activities that (at least in DeKalb County, Georgia) deprivation of liberty and property interests can be had

b) based on papers prepared by governmental unlicensed practitioners,

c) who may appear before their supervisor in representation of a recipient

c) and who may base their allegations of arrearages on a record keeping system incapable of even recording obligations, much less keeping track of obligations satisfied and those unsatisfied.

And the pendulum has swung so far that one who points out that the emperor has no clothes can be dismissed (legally and figuratively) by a Federal judge as merely expressing "displeasure with the ramifications of divorce and child support." The District Court in the instant case expressed her personal opinion that the violations of clearly established Georgia law of legal procedure as well as deprivation of the ancient right to a hearing free from impropriety were merely "ramifications of divorce" and do not

describe deprivations of Constitutional interests to which Plaintiff has an entitlement or a claim for relief.

Thus a judge of a Federal District Court, with daily exposure to federal rulings and judicial thinking, holds a good faith belief that the tenor of Supreme and Appeals Court opinions is that the deprivations experienced by Plaintiff are merely "ramifications of divorce." If this Court declines, in light of the District Court's good-faith belief, to hear this case, it will indicate to the lower federal courts (as well as the DeKalb County Superior Court) that the pendulum has not yet begun to swing back to a rule of law in the context of child support enforcement.

CONCLUSION

Plaintiff seeks review of the District Court's legal conclusions as reviewed by the Court of Appeals.

Most importantly, Plaintiff wishes to proceed in this case to discovery. And there appears to be much to be brought into evidence here.

In this process, however, Plaintiff offers to this Court the opportunity to apply some common sense rules of law to child support record keeping law. In light of the 1996 Welfare Reform Bill of which 42 U.S.C. § 666 is only a part, a statement of principle might be well taken before practices that arise from this new legislation take root and become difficult to eradicate.

If this Court reverses the Court of Appeals' opinion that Plaintiff failed to establish subject matter jurisdiction, on remand to the District Court, the case will fall back on Alternative II of the

District Court's Opinion, that Plaintiff failed to state a claim entitling him to relief under 42 U.S.C. § 1983. Hence Plaintiff urges this Court, as a matter of judicial efficiency, to review both District Court alternatives, so that, if remanded, this case may proceed to discovery.

Respectfully submitted,

John R. Haeger, Jr.
5464 Laurel Lane
Lilburn, Georgia 30047
770 717 1885

September 18, 1997

APPENDIX A -- JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FILED APRIL 21, 1997

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 96-8749
Non-Argument Calendar

D. C. Docket No. 1:96-CV-49-JEC

JOHN R. HAEGER,

Plaintiff-Appellant,

versus

Wonda Edmond, Child Support Receiver of DeKalb County; ; UNIDENTIFIED EMPLOYEES, of the DeKalb County Alimony and Support Unit; ASHLEY DUNCAN, Supervisor, DeKalb County U.R.E.S.A. unit; DEKALB COUNTY, GEORGIA; TERESSA F. HAEGER, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

Appendix A

(April 21, 1997)

Before DUBINA, CARNES, AND BARKETT, Circuit Judges.
PER CURIAM:

John R. Haeger filed a lawsuit for declaratory, injunctive, and monetary relief regarding injuries he alleges stemming from child support proceedings instituted against him in DeKalb County, Georgia. The district court dismissed the case for lack of subject matter jurisdiction, and Haeger appeals.

Having considered the matter, we conclude that the district court properly dismissed the case for lack of subject matter jurisdiction under the Rooker-Feldman doctrine, because Haeger's claims are "inextricably intertwined" with the judgment in the state court proceeding.

AFFIRMED.

APPENDIX B -- OPINION OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA

THE U. S. DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JOHN R. HAEGER, JR.	)	
	)	
Plaintiff	)	
	)	
v.	)	CIVIL ACTION
	)	NUMBER
	)	
Ms. WONDA M. EDMOND, *et al*	)	1 96 - CV - 0049 - JEC
	)	
Defendants	)	

JUDGMENT

This action having come before the court, Honorable Julie E. Carnes, United States District Judge, for consideration of defendants' motion for dismiss, and the court having granted said motion, it is

Ordered and Adjudged that the plaintiff claims against the defendants are dismissed.

Dated at Atlanta, Georgia, this 31th day of May, 1996.

Luther D., Thomas, Clerk

BY:_____
Deputy Clerk

Prepared, filed, and Entered
in the Clerk's office
May 31, 1996

Luther D. Thomas, Clerk
By: _____
Deputy Clerk

Appendix B

THE U. S. DISTRICT COUNT
FOR THE NORTHERN DISTRICT OF GEORGIA

John R. Haeger

Plaintiff :

v. :

: CIVIL NO.

Ms. Wonda Edmond, in her individual :
and official capacities; : 96- CV -0049-JEC
UNIDENTIFIED EMPLOYEES OF :
THE DEKALB COUNTY :
ALIMONY AND SUPPORT UNIT, :
in their individual and official :
capacities; ASHLEY DUNCAN, in :
her individual and official capacities; :
DEKALB COUNTY, GEORGIA; :
DR. TERESSA F. HAEGER; :
CAROL WEBB in her individual and :
official capacities; UNIDENTIFIED :
EMPLOYEES OF THE CLERK OF :
THE SUPERIOR COURT OF :
DEKALB COUNTY, in their :
individual and official capacities; :
HONORABLE HILTON FULLER, :
in his individual capacity; RICHARD :
JUGAR, in his individual capacity; :
JOHN WEINTRAUB in his :
individual and official capacities. :

Defendants :

6a

Appendix B

Appendix B

ORDER

This case is presently before the court on defendants' Motions to Dismiss [6,18,23], defendants Motion for Stay of Discovery and for Protective Order [19], plaintiff's Request to Add Defendants [17], plaintiff's combined Motion to Strike, Motion for More Definite Statement, and Motion for Sanction [20], and plaintiff's second Motion to Strike and Motion for More Definite Statement [21]. The Court has reviewed the record and the arguments of the parties and, for reasons set out below, concludes that defendants Fuller, Edmond, Duncan, Jugar, Weintraub, and DeKalb County's Motions to Dismiss should be DENIED AS MOOT, defendants' Motions for Stay of Discovery and Protective Order should be DENIED AS MOOT, Plaintiff's request to Add Defendants should be DENIED, Plaintiff's combined motion to Strike, Motion for More Definite Statement, and Motion for Sanction should be DENIED AS MOOT, and plaintiff's second Motion to Strike and Motion for More Definite Statement should be DENIED AS MOOT. Furthermore, the Court finds that plaintiff's claims against the remaining defendant, Teressa Haeger, who has not yet filed a motion to dismiss, should likewise be DISMISSED.

BACKGROUND

This case primarily involves an effort by the DeKalb County Superior Court to enforce an order entered against plaintiff to pay child support. Plaintiff John Haeger and defendant Teressa Haeger were granted a divorce by the DeKalb Superior Court. On May 14, 1993, plaintiff was ordered to pay child support to his ex-wife through the Alimony and Support Unit of the DeKalb County Superior Court (hereinafter "ASU"). Beginning May 1, 1993. Apparently aware of the monthly amount to be paid before the order was issued, but not the manner in which it should be paid, plaintiff made the first payment of $ 1500.00 directly to defendant Teressa Haeger rather than through the ASU.

Approximately six months later, Defendant Teressa Haeger falsely informed the ASU that plaintiff has failed to pay the child support payment due May 1, 1993 and requested that action be undertaken. Plaintiff subsequently received a "Final Notice" demanding payment of $ 1500.00. Additionally, based upon ASU's records indicating an absence of such payment and pursuant to the authority granted her under O.C.G.A. § 15-15-4.1, [1] defendant Edmond, as Child Support Receiver, prepared and filed a complaint with the DeKalb County Superior Court to initiate contempt proceedings. That pleading was accepted and filed by the office of the clerk.

The Honorable Hilton Fuller, another defendant named in this action, was the trial judge at the ensuing hearing on 'February 16, 1994. Plaintiff appeared at the hearing regarding the alleged deficiency, accompanied by counsel. Defendant Edmond also appeared, testifying at that hearing as to ASU's method of recording child support payments.

At some point during these proceedings, defendant Edmond received a copy of plaintiff's canceled May 1, 1993 child support check. Defendant Edmond then contacted defendant Teressa Haeger for confirmation. Defendant Haeger confirmed that the payment had indeed been made. Accordingly, Judge Fuller determined that plaintiff was not required to make an additional child support

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[1] "Whenever any person required to furnish support to a minor by payments through a child support receiver and whenever any such payments are not made in accordance with the judicial order or written agreement, the child support receiver shall be authorized to bring an action for contempt against the person required to make such payment. Any such action shall . . . be brought in the court which ordered the payment of child support." O.C.G.A. § 15-15-4.1

payment. Plaintiff, thus, prevailed at the hearing.

Following the hearing, defendant Edmond presented a proposed Order to Judge Fuller that was signed by him and them stored on the Clerk's microfilm case record system. Later, in response to plaintiff' request to inspect certain documents, defendant Edmond informed him that his request must be directed to defendant Weintraub, the DeKalb County Attorney. At some later date, defendant Jugar, the Court Administrator for the Fourth Judicial Administrative District of Georgia, permitted plaintiff to inspect the original documents from the ASU and to obtain copies.

Plaintiff then proceeded *pro se* to file a complaint in federal district court for the Northern District of Georgia on January 5, 1996.[2] He later amended his complaint on January 19, 1996 to include additional claims. Plaintiff classified his action as a 42 U.S.C. § 1983 civil rights claim. (Pl.'s Answer to Mandatory Interrogs. [2] at 1.) In his amended complaint, plaintiff categorizes his allegations into five general deprivation of due process challenges against various combinations of defendants. (Am. Compl. [4] at ¶¶ 84-91.) Beyond the alleged federal causes of action, plaintiff broadly asserts six supplemental state causes of action, over which he asks the Court to extend supplemental jurisdiction pursuant to 28 U.S.C. § 1367. (Am. Compl. [4] at ¶¶ 2, 92-97.) He seeks money damages and various forms of injunctive relief.

Specifically, plaintiff's due process claims allege: (1) failure to train, (2) capricious use of governmental power, (3) failure to provide a hearing free from impropriety, (4) improper notice, and (5) denial of the "generalized expectation of compliance [by] judicial employees and officers." (*See* Am. Compl. [4] at 15.) The state causes of action alleged are: (1) the unlicensed practice of law, (2) acceptance

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[2] The Court recognizes plaintiff's *pro se* status and will afford some latitude to him in construing his pleadings and arguments.

of pleadings prepared by an unauthorized person, (3) wilfully negligent provision lf computer record keeping services, (4) negligent record keeping, (5) violation of state separation of powers doctrine, and (6) violation of the Georgia Open Records Act.

Defendant Fuller filed a motion to dismiss based upon the contention that the District court lacked subject matter jurisdiction to hear plaintiff's claims. Defendants Edmond, Duncan, Jugar, Reeves, Weintraub, and Dekalb County filed a separate but overlapping motion to dismiss alleging, among other things, the lack of subject matter jurisdiction and the failure to state a claim upon which relief may be granted.

Plaintiff later submitted a Request to Add Defendants on April; 12, 1996. Plaintiff seeks to assert one federal and one state claim against Linda Reeves, Clerk of the Superior Court of Dekalb County, in her individual and official capacities, presumably as the previously unidentified member of that staff. In their Motion to Dismiss, defendants have included Linda Reeves "in the interests of judicial economy." (*See* Defs.' Mot. To Dismiss [18] at 1.) Similarly, Carol Jones, whom plaintiff contends he previously misidentified at Carol Webb, is also named under the exact same claims. While the Honorable Daniel M. Coursey, Jr. Is on the request to add list, it is not clear under which claims plaintiff seeks to sue him. Defendant Coursey filed a Motion to Dismiss [23] that "incorporat[ed] by reference all arguments set forth in defendant Fuller's Motion and Brief previously filed with this [C]ourt." Defendant Teressa Haeger, plaintiff's ex-wife, has not yet moved to dismiss the alleged capricious use of governmental power and improper notice claims under which she is being sued.

DISCUSSION

I. **Motion to Dismiss for Lack of Subject Matter Jurisdiction**. Defendants Fuller, Coursey, Edmond, Duncan, Jugar, Reeves, Weintraub, and Dekalb County have moved to dismiss the

pending claims, pursuant to FED. R. CIV. P. 12(b)(1), based on the contention that this Court lacks jurisdiction over the subject matter.[3] The Court finds that it indeed lacks subject matter jurisdiction over plaintiff's claims, and alternatively that plaintiff has failed to state a claim upon which relief may be granted.

It is well settled that "lower federal courts possess no power whatever to sit in direct review of state court decisions." *Atlantic Coast Line R. Co. v. Locomotive Eng'rs*, 398 U.S. 281, 296 (1970). See also, *Rooker v. Fidelity Trust Co.* 263 U.S. 413, 415-16 (1923). (Holding that federal district courts have no jurisdiction to 'entertain a proceeding to reverse or modify the judgment [of a state court] for [constitutional errors]."); *Reynolds v. Georgia*, 640 F. 2d 702,605 (5th Cir. Unit B) (concluding that if review of state court judgment is essentially exercise of appellate jurisdiction, district court has not power to entertain suit), *cert denied*, 454 U.S. 865 (1981); *National Car Loading Corp. v. Shulman*, 570 F. Supp. 3, 3-4 (N.D. Georgia 1983) (Vining, J.) (Dismissing for lack of subject matter section 1983 claim seeking injunctive relief land declaratory judgment that certain lower court ruling denied plaintiff of Fourteenth Amendment rights). Moreover, under the *Rooker-Feldman* doctrine, a federal district court 'may not decide federal issues that are 'inextricably intertwined' with the state court's judgment." *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983). See also

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[3] The doctrine of judicial immunity from liability for damages under section 1983 is firmly established. Accordingly, the Court concludes that Judge Fuller and Judge Coursey enjoy absolute immunity from an action for damages for acts committed within the scope of their judicial capacity. *Imbler v. Pachtman*, 424 U.S. 409, 419, n. 13 (1976). As to plaintiff's request for injunctive relief, the Court finds, pursuant to Part I of this Order, the Court lacks subject matter jurisdiction over such a claim.

Staley v. Ledbetter, 837 F.2d 1016, 1018 (11th Cir. 1988) (holding same); *Blue Cross and Blue Shield of Maryland v. Weiner*, 868 F.2d 1550, 1554 (11th Cir.) (applying doctrine), *cert denied*, 493 U.S. 892 (1989).

Notably, too, the Supreme Court has prohibited district courts from exercising subject matter jurisdiction over challenges to the constitutionality of a state court's action, even when the challenge is anchored to alleged deprivations of federally protected due process [rights." *Feldman*, 460 U.S. at 485 (quoting *Doe v. Pringle*, 550 F.2d 596, 599 (10th Cir. 1976), *cert denied*, 431 U.S. 916 (1977)). This doctrine recognizes that not only are state courts entirely competent to adjudicate federal constitutional claims, but the requirement that such claims be raised in state court affords state courts the opportunity to consider a state statute or rule in light of federal constitutional arguments and possibly offer a saving construction in response to those arguments. *Feldman*, 460 U.S. at 1315, n.16 (citing *Cardinale v. Louisiana*, 394 U.S. 437 438-9 (1969)).

Plaintiff argues that, as the prevailing party, he is not seeking to modify, overturn, or obtain review of the state court proceeding and claims that the jurisdictional basis for and the relief sought under 42 U.S.C. § 1983 also insulates his complaint from the *Rooker-Feldman* doctrine. (Pl.'s Br. In Opp'n to Def.'s Mot. To Dismiss [9] at ¶¶ 1-3.) He fails to address, however, whether the federal claims are inextricably intertwined with the state court proceeding.

To reiterate, the *Rooker-Feldman* doctrine has not been limited to actions expressly seeking direct review of the state court judgment. Rather, 'it [has been extended to actions] in which 'the constitutional claims presented [in federal court] are inextricably intertwined with the state court's grant' or denial of relief." *Hale v. Harney*, 786 F.2d 688, 691 (5th Cir. 1986) (quoting *Feldman*, 460 U.S. at 482 n.16).

A review of the complaint reveals that, aside from any direct review of plaintiff's ultimate victory in the state court action, issues

concerning the manner in which the complaint was brought , plaintiff's appearance before the court, and the specific actions of the judge, clerk, and other members of the Dekalb County Superior Court in adjudicating this hearing could not be much more inextricably intertwined with the state court proceeding. Despite plaintiff's attempt to portray his dissatisfaction with being summoned to defend himself in court as a distinct constitutional injury, it is manifest from his complaint that he is seeking essentially an appellate review of issues 'inextricably intertwined' with the state court proceeding.

The Eleventh Circuit has explicitly reaffirmed the validity of the *Rooker-Feldman* doctrine and has reminded the lower federal courts that federal review of state court decisions is entrusted to the Supreme Court. *Wood v. Orange County*, 715 F. 2d 1543, 1546 (11th Cir. 1983), *cert. denied*, 467 U.S. 1210 (1984). See also *Buckley Towers Condominium, Inc. v. Buchwald*, 595 F. 2d 253, 254 (5th Cir. 1979) ("Plaintiffs may present their constitutional and any other claims grounded in federal law to the state courts. If these state courts err, plaintiff's remedy is the United States Supreme Court, not in [the] District Court.")[4]

Moreover, another court in this district has determined that subject matter jurisdiction does not exist where a plaintiff brings a Section 1983 claims against the judge, jury and attorneys involved in the state court proceeding, albeit, following an unsuccessful lower court action. Sunn v. Dean, 597 F. Supp. 79 (N.D. Ga

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[4] In *Bonner v. City of Prichard*, 661 F. 2d 1206, 1209 (11th Cir. 1981) (*en banc*), the Eleventh Circuit Court of Appeals adopted as binding precedent all of the decisions of the former Fifth Circuit Court of Appeals handed down prior to the close of business on September 30, 1981.

1984)(Forrester, J.).[5] Relying on *Feldman*, the court explained that it "has no authority to decide constitutional issues which were raised, *or reasonably could have been raised in the state court proceeding*." *Id.* At 80. (Citing *Feldman*, 460 U.S. at 482, n.16) (emphasis added). Thus the *Rooker-Feldman* doctrine can only apply if the plaintiff had a reasonable opportunity to raise his federal claim in a state proceeding.

For example, in the state court proceeding plaintiff could have challenged the validity of O.C.G.A. § 15-15-4.1, which authorized defendant Edmond to bring an action against plaintiff, as violative of O.C.G.A. §§ 15-19-50, 15-19-51, and 15-19-52, which forbid unauthorized practice of law. Plaintiff, in fact, acknowledges the *Rooker-Feldman* prohibition as to claims "plaintiff could have reasonably presented in state court." (Pl.'s Br. In Opp'n to Def.'s Mot. To Dismiss [9] at 1.). Rather than demonstrating the absence of an opportunity to raise these federal claims alleged in his complaint, plaintiff merely reiterates his contention that he "is not seeking a review of a state court order." (*Id.*)

In the present case, plaintiff calls upon this court to review the actions of the judge and various state employees for error. "Insofar as plaintiff's claims would require this court to reverse, vacate, or otherwise modify the judgment of the state court, . . . *or to review the proceedings in the state court for error*," the district court lacks jurisdiction. *Sunn*, 597 F. Supp. at 80 (emphasis added).[6]

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[5] There seems to be no limiting language within the *Rooker-Feldman* doctrine to prohibit the determination that a *successful* plaintiff's claim is "inextricably intertwined" with the state court proceeding to merit dismissal by the district court for lack of subject matter jurisdiction.

[6] Other federal courts, in fact, have applied the Rooker-Feldman doctrine to circumstances involving divorce

Under certain circumstances, in determining whether a federal claim is inextricably intertwined, the Eleventh Circuit has analyzed whether the "claim succeeds only to the extent that the state court wrongly decided the issues before it."[7] *Datz v. Kilgore*, 51 F. 3d 252 (11th Cir. 1995) (quoting *Pennzoil co. V. Texaco, Inc.*, 481 U.S. 1,24-5 (1987) (Marshall, J. concurring).

Although, unlike the plaintiff in *Datz*, plaintiff prevailed at the state court level, the Court finds enough similarities to warrant application of the doctrine. Essentially, plaintiff's claims would succeed only to the extent that Judge fuller erred in "permitting" defendant Edmond to file a complaint and prepare an order. Accordingly, the Court concludes it lacks subject matter jurisdiction over plaintiff's complaints.

Although defendant Teressa Haeger has not submitted a motion to dismiss, FED. R. CIV. P. 12(h)(3) provides that whenever it appears that the court lacks jurisdiction over the subject matter, the

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and child support proceedings. Those courts have likewise held "that litigants may not obtain review of state court actions by filing complaints about those actions in lower federal courts case in the form of civil rights suits." Hale v. Harney, 786 F. 2d 688, 690-691 (5th Cir. 1986) (citing *Sawyer v. Overtone*, 595 F. 2d 252, 252 (5th Cir. 1979) and *Kimball v. The Florida Bar*, 632 F. 2d 1283, 1284 (5th Cir. 1980)).

[7] In *Data*, plaintiff was arrested and prosecuted for felony possession of a handgun. Before his criminal trial commenced, Datz sought to initiate a civil suit against the arresting officers under Section 1983. Following the plaintiff's conviction in state court, the district court (this Court) concluded that the *Rooker-Feldman* doctrine barred Data's civil claim and dismissed the claim.

court *shall dismiss* the action. FED.R.CIV.P. 12(h)(3). Another court in this jurisdiction has recognized that the question of subject matter jurisdiction can be raised by any party, or by the court *sua sponte*, at any time. *Preston v. Cigna Property & Cas. Ins. Co.*, 785 F. Supp. 1466 (N.D. Ga. 1992). (O'Kelley, J.))(citing Love v. Turlington, 733 F. 2d 1562, 1564 (11th Cir. 1984)). As to defendant Haeger, therefore, plaintiff's action is hereby dismissed.[8]

As to plaintiff's request to add defendants Jones and Coursey, the Court denies the motion pursuant to its authority under FED.R.CIV.P. 15(a). Rule 15(a) provides that "a party may amend the party's pleading only by leave of the court or by written consent of the adverse party." Because the Court finds that, for reasons stated above, subject matter jurisdiction over these claims does not exist, plaintiff's attempts to add these defendants would be futile and the motion should, therefore, be denied.[9]

II. **Motion to Dismiss for Failure to State a Claim**

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[8] Further, plaintiff failed to allege any set of facts tending to show that his ex-wife was a state actor or conspired with a state actor as required by section 1983.

[9] Moreover, pursuant to FED.R.CIV.P. 12(c), "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Thus, if and when defendants Haeger and Jones filed such a motion, the Court would grant them for the reasons discussed above. Indeed, another court in this district has concluded that a motion to dismiss should not be stricken on the ground that the motion was filed late where the tardiness did not prejudice the plaintiff. United States v. $633,021.67 in U.S. Currency, 842 F. Supp. 528, 530 (N.D. Ga. 1993) (Hall, J.). The futility of adding these defendants thus becomes even more apparent.

The Court finds alternatively that, assuming subject matter jurisdiction did exist, plaintiff has not stated a claim upon which relief may be granted. Defendants Edmond, Duncan, Jugar, Reeves, Weintraub, and Dekalb County have moved to dismiss the pending claims, pursuant to FED.R.CIV.P. 12(b)(6), based on their contention that the plaintiff has failed to state a claim upon which relief can be granted under 42 U.S.C. § 1983. In determining the merits of a 12(b)(6) motion, the Court must construe all of the factual allegations in the complaint as true. Jackson v. Okaloosa County, Fla., 21 F. 3d 1531, 1534 (11th Cir. 1994). Because it is unclear from the complaint the exact nature of the due process violations, we will treat the complaint as alleging both a procedural and substantive due process violation.

A. **Procedural Due Process**

Section 1983 is not itself a source of substantive rights, but merely provides "a method of vindicating federal rights else where conferred." *Baker v. McCollan*, 443 U.S. 137, 144, n.3 (1979). In order to prevail on a procedural due process claim, plaintiff must establish: "(1) a constitutionally protected interest in life, liberty, or property; (2) governmental deprivation of that interest; and (3) the constitutional inadequacy of procedures accompanying that deprivation." *Bank of Jackson County v. Cherry*, 980 F. 2d 1362, 1366 (11th Cir. 1993). See also *Cryder v. Oxendine*, 24 F. 3d 175, 177 (11th Cir. 1994) ("A section 1983 claim alleging a procedural due process clause violation requires proof of three elements: a deprivation of a constitutionally protected liberty or property interest; state action; and constitutionally inadequate process.") Accordingly, the threshold question in conducting the due process analysis is whether plaintiff had a property or liberty interest at all. *Board of Regents v. Roth*, 408 U.S. 564, 569-571 (1972).

Defendants argue that plaintiff does not have a valid due process claim because none of the alleged rights he has asserted are constitutionally protected. (Defs.' Br. In Supp. Of Mot. To Dismiss [18] at 10.) The Court concludes that a generous reading of

the plaintiff's complaint indicates that plaintiff is alleging the right to be free from spending "money and resources to defend against a specious. Baseless, and frivolous complaint," a right to the "reasonable legal expectation" that the child support receiver would not prepare and file a complaint if she were not an attorney, and the right to the expectation that he will be protected against litigation aimed at obtaining allegedly delinquent child support payments that were not made as ordered. (See Am. Compl. [4] at ¶¶ 84-91.) The allegation central to all of the alleged rights argues he was denied is that defendant Edmond should not have been allowed to file a complaint against plaintiff.[10]

In order to have a property interest in the aforementioned rights, an individual must have more than a "unilateral expectation" of the benefit -- he must have a "legitimate claim of entitlement" to it. *Roth*, 408 U.S. at 577. It cannot be seriously argued that there is a *constitutional* right to be free from suit, even where the basis for the suit is erroneous or frivolous. Instead, there are remedies, such as the award of attorney fees, that serve to compensate a prevailing party for his time and trouble in defending against a non-meritorious claim.

In asserting the existence of these alleged constitutional rights, plaintiff mistakingly relies upon O.C.G.A. § 15-19-51. Even if § 15-15-4.1, which authorized defendant Edmond to bring an action against plaintiff, was found to be in conflict with § 15-19-51 or § 15-19-52, which forbids the unauthorized practice of law, plaintiff has no

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[10] Plaintiff relies on O.C.G.A. § 15-19-51 which provides in pertinent part:

> (A) It shall be unlawful for any person other than a duly licensed attorney at law: (1) To practice or appear as an attorney at law for any person other than himself in any court . . . .; (6) To render legal services of any kind in actions or proceedings of any nature.

identifiable property interest of which he was deprived. Defendant Edmond's filing, *at most* , would constitute the unauthorized practice of law. If defendant Edmond's conduct possibly amounted to the unauthorized practice of law, this Court would not be the proper forum for such an adjudication. O.C.G.A.§§ 15-19-57, 15-19-58.[11]

Plaintiff has neither attempted to define nor alleged a deprivation of a cognizable liberty interest. Although liberty has been defined with less precision, it broadly encompasses rights such as freedom from bodily restraint, the right to contract, to marry, to establish a home and family, and "'generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men.'" *Board of Regents v. Roth*, 408 U.S. at 572, (quoting *Meyer v. Nebraska*, 43 S. Ct. 625, 626 (1923)).

Accordingly, the Court readily concludes that the filing of a complaint by the Child Support Receiver, pursuant to O.C.G.A. § 15-15-4.1, does not deprive plaintiff of a property or liberty interest. The Court holds that plaintiff had no protectable interest in being insulated from having to respond to the complaint prepared by defendant Edmond in accordance with her duties. The analysis for a deprivation of procedural due process necessarily ends when plaintiff fails to show an underlying constitutional violation.[12]

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[11] "[T]he State Bar of Georgia, the Judicial Council of this state, or any organized bar association of this state are authorized to inquire into and investigate charges of unauthorized practice of law . . .(or) to institute in the proper superior court of this state an action or actions seeking injunctive relief against any person." O.C.G.A. §§ 15-19-57 and 15-19-58.

[12] For example, there is no viable cause of action with respect to a "failure to train" claim under Section 1983 where plaintiff has failed to show a deprivation of a federal

Furthermore, had plaintiff established the existence of a property or liberty interest, and that he was deprived of it in some way, the accompanying judicial proceeding was not inadequate. He had notice of the hearing and had an opportunity to be heard and to defend himself. Moreover, plaintiff ultimately prevailed. The Court finds that plaintiff's inaction contributed to his own woes. When notified that his payment was to be made through the ASU, he should have informed the ASU that he had already paid the May installment directly to his ex-wife. In addition, he could have pursued the legal argument that § 15-15-4.1 was unconstitutional or that defendant Edmond's filing of a complaint under § 15-15-4.1 constituted unlawful practice of law in state court while accompanied by counsel.

B. Substantive Due Process

Aside from failing to state a claim for a violation of procedural due process rights, plaintiff has also failed to state a claim for a violation of substantive due process rights. When analyzing whether there has been a violation of substantive due process in the context of section 1983:

[f]irst, it must be determined whether there has been a deprivation of a federal constitutionally protected interest, and secondly, whether the deprivation, if any, is the result of an abuse of government power sufficient to raise ordinary tort to the stature of a constitutional violation. *Rymer v. Douglas County*, 764 F. 2d 796, (11th Cir. 1985).[13]

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right. *Parratt v. Taylor*, 451 U.S. 527, 536-39 (1981).

[13] See also McKinney v. Pate, 20 F. 3d 1550, 1556 (11th Cir. 1994), cert denied, 115 S. Ct. 898 (1995) (noting that substantive due process rights are fundamental rights, created only by the Constitution, and that the due process clause does not permit federal courts to substitute

This Court determines that, accepting the plaintiff's allegations as true, the action taken by the defendants was not such an abuse of governmental power so as to rise to the level of a constitutional violation. Accordingly, no substantive due process rights were violated, and no claim has been stated upon which relief may be granted.

III. Supplemental Jurisdiction

Lastly, the Court dismisses plaintiff's "supplemental" state claims without prejudice pursuant to 28 U.S.C. § 1367(c)(3).[14] As the Supreme Court has observed, "a federal court should consider and weigh, in each case, and at every stage of litigation, the value of judicial economy, convenience, fairness, and comity in order to decide whether to exercise jurisdiction over a case brought in that court involving pendent state-law claims. When the balance of these factors indicates that a case properly belongs in state court, as when the federal-law claims have dropped out of the lawsuit in its early stages and only state-law claims remain, the federal court should decline the exercise of jurisdiction by dismissing the case without prejudice." Carnegie-Mellon Univ. V. Cohill, 484 U.S. 343, 350 (1988) (footnote omitted). See also, Hardy v. Birmingham Bd. Of Educ., 954 F. 2d 1546, 1550 (11th Cir. 1992).

The Court concludes that dismissal is appropriate in this case because all the federal claims have been dismissed. "Certainly, if the federal claims are dismissed before trial, even though not insubstantial

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their judgment for the numerous judgment calls made each day by state agencies.

[14] This section provides that "[t]he district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if a district court had dismissed all claims over which it has original jurisdiction."
28 U.S.C. § 1367(c)(3).

in a jurisdictional sense, the state claims should be dismissed as well. United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966) (emphasis added)(footnote omitted).

CONCLUSION

For the foregoing reasons, the Court concludes that defendant' Fuller, Edmond, Duncan, Jugar, Weintraub, and Dekalb County's Motion to Dismiss [6,18] is GRANTED, defendant Coursey's Motion to Dismiss [23] is DENIED AS MOOT, defendants' Edmond, Duncan, Jugar, Reeves, Weintraub, and Dekalb County's Motion for Stay of Discovery and Protective Order [19] is DENIED AS MOOT, plaintiff's combined Motion to Strike, Motion for more Definite Statement, and Motion for Sanction [20] is DENIED AS MOOT, and plaintiff's second Motion to Strike and Motion for More Definite Statement [21] is DENIED AS MOOT. The Court DISMISSES, *sua sponte*, the claims against the remaining defendant, Teressa Haeger, as the court lacks subject matter jurisdiction over the action. Finally, because all of the federal claims have been dismissed, the Court DISMISSES plaintiff's state law claims.

SO ORDERED, this 31 day of May, 1996.

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Julie E. Carnes
United States District Judge

APPENDIX C -- JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FILED JUNE 20, 1997

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 96-8749

John R. Haeger,

Plaintiff-Appellant,

versus

Wonda Edmond, Child Support Receiver of DeKalb County; ; Unidentified Employees, of the DeKalb County Alimony and Support Unit; Ashley Duncan, Supervisor, DeKalb County U.R.E.S.A. unit; Dekalb County, Georgia; Teressa F. Haeger, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND SUGGESTIONS(S) OF REHEARING EN BANC (Opinion _____, 11th Cir., 19___,

_____ F. 2d _____).

Before DUBINA, CARNES, and BARKETT, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

_____
UNITED STATES CIRCUIT JUDGE

APPENDIX D -- OPINION OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA

(In a subsequent suit involving almost the same actors and similar systematic deprivations as well as alleged deprivation of notice and hearing and equal protection of the law)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JOHN R. HAEGER, JR.,
Plaintiff

v. NO. 1:97-CV-1862-JEC

MS. WONDA EDMOND, Child Support Receiver of DeKalb County, et al,
Defendants

ORDER

This case is before the Court on defendants' Motion To Dismiss [3]. This is plaintiff's third complaint before this Court. In all three complaints, he has alleged a variety of claims that express his displeasure with the ramifications of divorce and child support litigation that occurred in DeKalb County several years ago. On May 31, 1996, this Court issued a 22 page order dismissing plaintiff's complaint. *Haeger v. Edmond, et al.*, 1:96-CV-0049 JEC. The short reason for the Court's dismissal was its lack of jurisdiction, as a federal court, to review state divorce litigation decision. Thereafter, on July 3, 1996, in *Haeger v. Sullivan, et al.*, 1:96-CV-214 JEC, this Court likewise, dismissed a similar complaint, for the same reasons.

Now, plaintiff has filed a third complaint arising out of the same core facts. For the reasons well stated in defendant's brief, the Court **DISMISSES** plaintiff's complaint. The court **GRANTS** defendants' request for an award of attorneys' fees, pursuant to 42

U.S.C. § 1988. Not on.ly are plaintiff's claims frivolous, but he ;has been told so by this Court on two previous occasions. The Court directs defendants to file a memorandum detailing their fees and expenses within thirty (30) days of this Order.

SO ORDERED, this 10 day of September, 1997.

JULIE E. CARNES
UNITED STATES DISTRICT JUDGE

APPENDIX E -- RELEVANT STATUTES, ORDERS, AND ETHICAL STRICTURES INVOLVED

DUE PROCESS OF LAW

14th Amendment, U. S. Constitution, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

JUDICIAL ADMINISTRATIVE DISTRICTS AND ADMINISTRATIVE JUDGESHIPS CREATED

O.C.G.A. § 15-5-2. **Judicial administration district created; boundaries.**

Ten judicial administration districts of more or less equal population in each district are created within this state. The boundaries of the ten judicial administration districts, to the extent possible, shall follow the boundaries existing on July 1, 1976, of the ten United States congressional districts. The Governor, after conferring with the superior court judges, shall establish by July 1, 1976, the original boundaries of each judicial administration district pursuant to this Code section. The ten administrative judges provided for tin this article may provide for any necessary changes in the boundaries of such districts not inconsistent with this Code section.

O.C.G.A. § 15-5-3. **District councils created; composition; presiding officer; meeting rules.**

A district council for each judicial administration district is created composed of all judges of the superior courts within the district. The superior court judge in each district having seniority in numbers of years as a superior court judge shall serve as presiding officer of the district council. Each district council shall meet at least once a year and as often as required to discuss administrative problems peculiar to the district and otherwise to perform its duties. Each district council shall establish rules, by majority vote, which shall cover the right to call additional meetings and procedures for handling the administrative work of the council.

O.C.G.A. § 15-5-4. **Election of district administrative judge; term; removal.**

The judges of each district council shall elect a superior court judge or a senior judge of the superior court to serve for a two-year term as an "administrative judge" within the district. The district administrative judge shall serve until his successor is elected and qualified; provided, however, that the district administrative judge may be removed at any time by a two-thirds vote of all judges comprising the district council. The duties of the administrative judge shall be additional duties which shall not be construed to diminish his other responsibilities.

AN ATTORNEY OR A PARTY MUST SIGN ALL PLEADINGS

Georgia Supreme Court's Uniform Rules of Superior Court
Rule 36.4 Signatures. All judgments, orders, pleadings and other documents shall bear the signature of the responsible attorney or party who prepared the document, his name, proper address and telephone number typed or printed underneath.

Appendix E

RESOLUTION REQUIRED TO TRIGGER AUTHORITY FOR CHILD SUPPORT RECEIVER TO BRING AN ACTION

O.C.G.A. § 15-15(2)(a) **Office of Receiver of child Support; establishment; appointment of receiver; term; removal; additional employees.**

The governing authority of each county within this state is authorized by appropriate resolution to establish an Office of the Receiver of Child Support and to establish the position of child support receiver in accordance with this chapter.

O.C.G.A. § 15-15-4.1 **Contempt action by child support receiver where payments not made in accordance with order.**

Whenever any person required to furnish support to a minor by payments through a child support receiver and whenever such payments are not made in accordance with the judicial order or written agreement, the child support receiver shall be authorized to bring an action for contempt against the person required to make such payments. Any such action shall be brought pursuant to Code Section 19-6-4 and shall be brought in the court which originally ordered the payment of child support

Appendix E

45 CFR Subtitle B--Regulations Relating to Public Welfare
CHAPTER III--Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services
Part 307 Computerized support enforcement systems
§ 307.10 Functional requirements for computerized support enforcement systems

At a minimum, each State's computerized support enforcement system established under the Title IV-D State Plan at § 302.85 of this chapter must:

(a) . . .

(b) Control, account for, and monitor all the factors in the support collection and paternity determination processes under the State Plan. At a minimum this must include:
(1) . . .
. . . . .
(7) Maintaining accounts receivableon all amounts owed, collected, and distributed
. . .
(15) Using automated processes, to assist the State in meeting State plan requirements under part 302 of this chapter and Standards for program operations under part 303 of this chapter, incluuding, but not limited to:
(i) The automated maintenance and monitoring of accurate records of support payments;
. . .
(16) . . .

Appendix E

Canons of Ethics of The State Bar of Georgia

Rule 3-103

(CANON 3)

A Lawyer Should Assist in Preventing the Unauthorized Practice of Law

Directory Rule 3-101. Aiding Unauthorized Practice of Law

(A) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.

Appendix E

ESTABLISHING CHILD SUPPORT RECEIVER POSITION PARTIAL DELEGATION OF SUPERVISORY AUTHORITY

Administrative Order 86-1001 of the Stone Mountain Judicial Circuit

In the Superior Court of the
Stone Mountain Judicial Circuit
DeKalb County, Georgia

ADMINISTRATIVE ORDER

The Superior Court of the Stone Mountain Judicial Circuit creates and establishes an Alimony and Support Unit to process and monitor the collection and disbursement of court ordered alimony and/or support payments.

1. Collection and Disbursement of Child Support, Alimony, and Property Settlement Payments. The Alimony and Support Coordinator of DeKalb County, shall establish an Alimony and Support Unit which shall consist of one or more employees charged with the responsibility of collecting and distributing child support, alimony and property division payments payable in cash installments, received by the Alimony and Support Unit from any other source and for such purposes as may be authorized by the Superior Court Judges. The Alimony and Support Unit Coordinator shall have supervisory and administrative control over the personnel and activities of the Alimony and Support Unit, including but not limited to the method of collecting, disbursing and accounting for alimony and support payments, except as may be provided herein. The Coordinator shall report to the Court Administrator for administrative management purposes.

2. Date of Operation of Alimony and Support Unit. The Alimony and Support Unit of the Superior Court will be operational on or about 1 August 1985. On this date the unit will be capable of receiving and disbursing alimony and child support funds in accordance with the policies established in this order.

3. Payment of Funds to the Alimony and Support Unit. Based upon the inherent power of the Court to obtain information relating to the compliance of its orders and to enforce its orders, and upon request from either party, with approval of the assigned trial judge, final decrees entered in divorce, alimony, child support, support and maintenance modification of child support, alimony or contempt actions may provide that payments required to be made in the form of alimony and child support be made by the party required to make any such payments, directly to the Alimony and Support Unit rather than to the recipient of the funds.

4. Incorporation in Court Decrees. Orders of this Court providing for payments in these actions set forth above shall provide that payments shall be made in accordance with the provisions of this order, which shall by reference be incorporated in and made a part of this decree.

5. Administrative Charge. There will be cost incurred in collecting and distributing funds received by the Alimony and Support Unit, and it is within the inherent power of the Court to provide an administrative charge sufficient to cover the cost of collecting and disbursing the support payments. From all funds received by the Alimony and Support Division, there shall be included an additional administrative charge of five per cent (5%), not to exceed $2.00 for child support payments and ten per cent (10%), not to exceed $5.00 for alimony

payments, which shall be paid by the Alimony and Support Unit into the general fund of the County.

6. Modification. When parties have been ordered to make payments to the Alimony and Support Unit, payments shall continue in that manner until such time as the final decree is modified. The final decree may be modified upon the filing of a motion requesting that the decree be modified.

7. Notice to Payor. Upon the payor's failing to comply with an order incorporating this rule, the payor shall be notified by the Alimony and Support Unit by mail that unless within fifteen (15) days payment is received, his non-compliance shall be reported to the assigned judge of the Superior Court and an order issued for the payor to show cause why the payor should not be held in contempt, including the possibility that the cost of the action may be assessed by the court against the defendant/respondent.

8. Notice to the Court. The Alimony and Support Unit shall notify the Judges of the Superior Court of those payors who have failed to comply with orders of this Court, giving to the Court addresses, necessary payment information, and when notice of non-compliance was given to the payor.

9. Order Issued on Motion of the Court. Upon receipt from the Alimony and Support Unit of information indicating non-compliance by a payor, the Court may issue an order directing the payor to appear before the Court to show cause, if any he can, why the payor should not be held in contempt of court. When the case is filed with the Clerk's office, the filing fee, plus service cost, will be temporarily waived. If the Court determines that the Defendant/Respondent is in contempt, court costs to include filing and service fees may be assessed

against the Defendant/Respondent. These fees will be immediately paid to the Alimony and Support Unit for transfer to the Clerk of Superior Court. Attorneys fees will not be collected and disbursed by the Alimony and Support Unit.

10. Parties Required to Attend Hearings. The Defendant/ Respondent is required to be in attendance at the contempt hearing unless his attendance is waived by the Court.

The above and foregoing is hereby adopted as an Order of this Court by the Superior Court Judge of DeKalb County.

DONE AND ORDERED this 27th day of May 1986, NUNC PRO TUNC 16 JULY 1985.

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CURTIS V. TILLMAN, CHIEF JUDGE
STONE MOUNTAIN JUDICIAL CIRCUIT

Appendix E

MAIL FRAUD

18 U.S.C. § 1341 Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply or furnish or procure for unlawful any counterfeit or spurious coin, obligation, security, or other article or anything represented to be or intimated to be or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice of attempting so to do, places in any post office or authorized depository of mail matter, any matter or thing whatever to be sent or delivered by Postal Service, or takes or receives therefrom, any such matter or thing and knowingly causes to be delivered by main according to the direction there or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $ 1,000 or imprisoned not more than five years, or both.

POLICY: APPEARANCE/REPRESENTATION AT HEARING IS OPTIONAL

Extracts from a Fourth Judicial Administrative District publication: "DEKALB COUNTY SUPERIOR COURT ALIMONY AND SUPPORT UNIT"

"The petitioner is encouraged to attend the hearing even though his or her presence is not required."

"The petitioner has an option of having her or her own attorney in attendance."

Appendix E

DEFINITION OF PRACTICE OF LAW
PROHIBITION OF UNLICENSED PRACTICE

O.C.G.A. § 15-19-50. "Practice of law" defined.

The practice of law in this state is defined as:

(1) Representing litigants in court and preparing pleadings and other papers incident to any action or special proceedings in any court or other judicial body.

(2) Conveyancing;

(3) The preparation of legal instruments of all kinds whereby a legal right is secured;

(4) The rendering of opinions as to the validity or invalidity of titles to real or personal property;

(5) The giving of any legal advice; and

(6) Any action taken for others in any matter connected with the law.

O.C.G.A. § 15-19-51. Unauthorized practice of law forbidden.

(a) It shall be unlawful for any person other than a duly licensed attorney at law:

(1) To practice or appear as an attorney at law for any person other than himself in any court of this state or before any judicial body;

(2) To make it a business to practice as an attorney at law for any person other than himself in any of such courts;

(3) To hold himself out to the public or otherwise to any person as being entitled to practice law;

(4) To render or furnish legal services or advice;

(5) To furnish attorneys or counsel;

(6) To render legal services of any kind in actions or proceedings of any nature;

(7) To assume or use or advertise the title of "lawyer," "attorney at law," or equivalent terms in any language in such a

manner as to convey the impression that he is entitled to practice law or is entitled to furnish legal advice, services, or counsel; or

(8) To advertise that either alone or together with, by, or through any person, whether a duly and regularly admitted attorney at law or not, he has, owns, conducts, or maintains an office for the practice of law or for furnishing legal advice, services, or counsel; or

(b) Unless otherwise provided by law or by rules promulgated by the Supreme Court, it shall be unlawful for any corporation, voluntary association, or company to do or perform any of the acts recited in subsection (a) of this Code section.

O.C.G.A. § 15-19-52. Lawful acts by parties involved; banking advice; legal instruments; title papers.

Nothing contained in this article shall prevent any corporation, voluntary association, or individual from doing any act or acts set out in Code Section 15-19-50 to which the persons are a party; but, in preparing and filing affidavits in attachments and prosecuting such proceedings, it shall be unlawful for the plaintiffs to act through any agent or employee who is not a duly licensed attorney at law. Moreover, no bank shall be prohibited from giving any advice to its customers in matters incidental to banks or banking; nor shall any person , firm, or corporation be prohibited from drawing any legal instrument for another person, firm, or corporation, provided it is done without fee and solely at the solicitation and the request and under direction of the person, firm, or corporation desiring to execute the instrument. Furthermore, a title insurance company may prepare such papers as it thinks proper or necessary in connection with a title which it proposes to insure, in order, in its opinion, for it to be willing to insure the title, where no charge is made by it for the papers.

Appendix E

EX PARTE COMMUNICATIONS
PUBLIC STATEMENTS BY COURT PERSONNEL

GEORGIA CODE OF JUDICIAL CONDUCT
(Promulgated by the Georgia Supreme Court)

CANON 3B(7) Judges shall accord to every person who has a legal interest in a proceeding or that person's lawyer, the right to be heard according to the law*. Judges shall not initiate or consider ex parte communications, or consider other communications made to them outside the presence of the parties concerning a pending or impending proceeding, except that:

CANON 3B(7)(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(I) the judge reasonably believes that no party will gain procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all parties of the substance of this ex parte communication and allows an opportunity to respond.

CANON 3B(7)(c) Judges may consult with court personnel whose function it to aid the judge in carrying our the judge's adjudicative responsibilities, or with other judges.

CANON 3B(9) Judges shall not, while a proceeding is pending or impending in any court, make any public comment* that might reasonably be expected to affect its outcome or impair the fairness or make any non-public comment that might substantially interfere with a fair trial or hearing. Judges shall require* similar abstention on the part of court personnel* subject to their direction and control. This

subsection does not prohibit judges from making public statements in the court of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

GEORGIA OPEN RECORDS ACT

O.C.G.A § 50-18-70 (a) and (b) **Inspection of public records; printing of computerized indexes of county real estate deed records; time for determination of whether requested records are subject to access.**

(a) As used in this article, the term "public record" shall mean all documents papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar material prepared and maintained or received in the course of the operation of a public office or agency. "Public records" shall also mean any such items received or maintained by a private person or entity on behalf of a public office or agency which are not otherwise subject to protection from disclosure. Provided, further, this Code section shall be construed to disallow an agency's placing or causing such items to be placed in the hands of a private person or entity for the purpose of avoiding disclosure. As used in this article, the term "agency" or "public agency" or "public office" shall have the same meaning and application as provided for in the definition of the term "agency" in paragraph (1) of subsection (a) of Code Section 50-14-1 and shall additionally include any association, corporation, or other similar organization which: (1) has a membership or ownership body composed primarily of counties, municipal corporations, ro school districts of this state or their officers or any combination thereof; and (2) derives a substantial portion of its general operating budget from payments from such political subdivisions.

All public records of an agency as defined in subsection (a), except those which by order of a court of this state or by law are prohibited or specifically exempted from being open to inspection by

the general public, shall be open for a personal inspection by any citizen of this state at a reasonable time and place; and those in charge of such records shall not refuse this privilege to any citizen.